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Attorneys for Plaintiffs, RIVERSIDE
POLICE OFFICERS ASSOCIATION AND
TORRANCE POLICE OFFICERS ASSOCIATION,
on their own behalf and on behalf of a class of others
similarly situated

UNITED DISTRICT COURT OF CALIFORNIA
CENTRAL DISTRICT OF CALIFORNIA

RIVERSIDE POLICE OFFICERS
ASSOCIATION and TORRANCE
POLICE OFFICERS ASSOCIATION,
on their own behalf and on behalf of
others similarly
situated,

Plaintiffs,

v.

PEACE OFFICERS RESEARCH
ASSOCIATION OF CALIFORNIA
LEGAL DEFENSE FUND; LEGAL
DEFENSE ADMINISTRATORS, INC.;
EDWARD FISHMAN; CINDI
FORBES; REBECCA MANN; FRED
ROWBOTHAM; DEE DEE
LUNDQUIST; DUSTIN SMITH;
CHRIS COULTER; KERRY
CONDON; RON COTTINGHAM;
MICHAEL DURANT,

Defendants.

CASE NO. 8:15-CV-1335

**COMPLAINT FOR BREACH OF ERISA
FIDUCIARY DUTIES AND
WRONGFUL DENIAL OF ERISA
BENEFITS; DEMAND FOR JURY
TRIAL**

1 **I. PREFACE**

2 1. This is an action for damages, injunctive relief and declaratory relief for
3 injuries suffered by the Plaintiffs.
4

5 **II. JURISDICTION AND VENUE**

6 2. Venue is proper under 28 U.S.C. § 1391 and 15 U.S.C. §§ 15 and 22,
7 because the Defendants transact business in, and the wrongs alleged herein occurred
8 primarily within, the Counties of Los Angeles and Riverside in the Central District of
9 California.
10

11 **III. PARTIES**

12 3. Plaintiffs, the Riverside Police Officers Association (“RPOA”) and
13 Torrance Police Officers Association (“TPOA”), are non-profit corporations made up
14 of police officers, employed by the City of Riverside Police Department and the City
15 of Torrance Police Department. The RPOA and TPOA’s duties include contracting
16 with third parties to provide legal defense to their members for incidents arising out of
17 or affecting their employment.

18 4. RPOA and TOPA, on behalf of their members, have standing pursuant to
19 29 U.S.C. § 1132(a)(2) to sue as either a participant or a person under 29 U.S.C. §
20 1002. The term “participant” means any employee or former employee of an
21 employer, or any member or former member of an employee organization, who is or
22 may become eligible to receive a benefit of any type from an employee benefit plan
23 which covers employees of such employer or members of such organization, or whose
24 beneficiaries may be eligible to receive any such benefit.

25 5. Alternatively, RPOA and TPOA have standing as persons. The term
26 “person” is defined by Section 1002 to mean an individual, partnership, joint venture,
27 corporation, mutual company, joint-stock company, trust, estate, unincorporated
28 organization, association or employee organization.

1 6. Defendant, Peace Officers Research Association of California
2 (“PORAC”), Legal Defense Fund (“LDF”), is a pre-paid legal services ERISA trust
3 that acts as a third-party payer for law enforcement personnel who pay into the trust
4 and request legal representation. PORAC LDF operates nationwide but started in
5 California and contracts with over 90% of California’s law enforcement unions to
6 provide this third-party payer service.

7 7. At all relevant times herein, and for all purposes connected with
8 management of the fund, PORAC LDF delegated its final policy making authority to
9 Defendant Legal Administrators, Inc. (“LDA”), owned, operated and managed by
10 Defendants, Edward Fishman, Cindi Forbes and Rebecca Mann. PORAC LDF
11 adopted and ratified each of the decisions of LDA, Fishman, Forbes and Mann, as
12 alleged herein, as its own policies, customs, practices or decisions, as if the same had
13 been promulgated directly by PORAC LDF.

14 8. PORAC LDF represents itself to be a group pre-paid legal services plan
15 and welfare benefit plan as defined in Section 3(1) of ERISA, 29 U.S.C. § 1002(1).

16 9. LDA is a California corporation, with its principal office located in
17 Stockton, California. Beginning on or about January 1, 2011, LDA has managed
18 PORAC LDF’s day-to-day operations, acting as PORAC LDF’s third party
19 administrator.

20 10. Plaintiffs are informed, believe and allege that Fishman, Forbes and
21 Mann owned LDA and manage the activities of PORAC LDF. Fishman, Forbes and
22 Mann maintained these positions at all relevant times and in doing the things alleged
23 herein, Fishman, Mann and Forbes acted within the course and scope of their
24 employment by LDA, and as an official policy maker for PORAC LDF. As the
25 administrators for PORAC LDF, LDA, Fishman, Forbes and Mann are vested with
26 policy-making authority over actions such as the ones at issue in this complaint.

1 11. Plaintiffs are informed, believe and allege that LDA, Fishman, Forbes
2 and Mann are compensated by PORAC LDF based in part on the membership totals of
3 planned participants in PORAC LDF.

4 12. Plaintiffs are informed, believe and allege that Defendants Fred
5 Rowbotham, Dee Dee Lundquist, Dustin Smith, Chris Coulter, Kerry Condon, Ron
6 Cottingham and Michael Durant, each reside in the State of California and have
7 served as trustees for PORAC LDF during all relevant times alleged herein. These
8 Defendants will, at times, be collectively be referred to as “The Trustees.”

9 13. LDA, Fishman, Forbes, Mann and The Trustees, are each considered
10 fiduciaries of PORAC LDF, under 29 U.S.C. § 1102(a)(2), during all relevant times
11 alleged herein.

12 14. Defendants, and each of them, were the agents, employees, and servants
13 of each of the other Defendants. Defendants acted in the course and scope of said
14 agency, employment and service at all relevant times alleged herein.

15
16 **IV. CLASS ACTION ALLEGATIONS**

17 15. Plaintiffs bring this action on their own behalf and as a class action,
18 pursuant to Rule 23 of the *Federal Rules of Civil Procedure*, on behalf of a class
19 consisting of all current and former participants and beneficiaries whose individual
20 dues have funded PORAC LDF.

21 16. The members of the class are so numerous that joinder of all members is
22 impracticable. While the exact number of class members is unknown to Plaintiffs at
23 this time, and can only be ascertained through appropriate discovery, Plaintiffs believe
24 that there are, at a minimum, 9,000 members of the class.

25 17. Common questions of law and fact exist as to all members of the class,
26 which predominate over any questions affecting solely individual members of the
27 class. Among the questions of law and fact common to the class are:

28 A. Whether Defendants were fiduciaries;

- B. Whether Defendants breached their fiduciary duties;
- C. Whether PORAC LDF and its members were injured by such breaches of fiduciary duties; and
- D. Whether the class is entitled to damages.

18. Plaintiffs' claims are typical of the claims of the other members of the class, as Plaintiffs and all members of the class sustained injury arising out of Defendants' wrongful conduct in breaching their fiduciary duties and violating the laws of ERISA as alleged herein.

19. Plaintiffs will fairly and adequately represent and protect the interest of the class. Plaintiffs have retained able counsel with experience in class action litigation. The interests of Plaintiffs are coincident with and not antagonistic to the interests of the other class members.

20. Prosecution of separate actions by members of the class would create a risk of inconsistent adjudications with respect to individual members of the class, which would establish incompatible standards of conduct for Defendants, or adjudications with respect to individual members of the class would, as a practical matter, be dispositive of the interests of the other members who are not party to the adjudications, or substantially impair or impede their ability to protect their interests.

21. The claims herein are made under the laws of ERISA and related principals of Federal Common Law that cannot be asserted by Plaintiffs in derivative actions against the Defendants or in class actions under securities law.

V. FACTS COMMON TO ALL COUNTS

22. Plaintiffs sought out and procured PORAC LDF's services and mutually agreed with PORAC LDF that Plaintiffs, as Member Associations, would pay dues to PORAC LDF to act as a third-party payer for Plaintiffs' legal services as set forth in the PORAC LDF plan ("The Plan").

1 23. PORAC LDF provided third party payer services as a pre-paid legal
2 services ERISA trust to RPOA until October 9, 2013, and to TPOA until October 1,
3 2013. In PORAC LDF's capacity as a third party payer, PORAC LDF would contract
4 with law firms to provide legal representation to Plaintiffs and its other members.

5 24. During the period of time that Plaintiffs were Member Associations,
6 Plaintiffs submitted claims on their own behalf and on behalf of Plaintiffs' members
7 ("Member Participants") and benefits had been paid under the PORAC LDF Plan
8 Document.

9 25. Up until 2011, PORAC LDF had been administered by Delta Health
10 Benefits, an independent third party, without ties to PORAC LDF or The Trustees.

11 26. In 2011, administration of PORAC LDF was taken over by LDA,
12 Fishman, Forbes and Mann. Fishman had previously been hired by Delta Health
13 Benefits and had used his influence as a trustee to convince PORAC LDF to terminate
14 its relationship with Delta Health Benefits and to instead hire his start-up company -
15 LDA - to administer PORAC LDF. The manner of LDA, Fishman, Forbes and
16 Mann's compensation by PORAC LDF, based upon the number of plan participants,
17 was never disclosed to Plaintiffs, nor was the inherent conflict of interest arising out
18 of the manner of compensation paid to LDA, Fishman, Forbes and Mann ever
19 disclosed.

20 27. During the period of time that Plaintiffs were Member Associations, they
21 had from time to time retained the Law Firm of Lackie, Dammeier, McGill & Ethir
22 ("LDME") for legal actions involving Plaintiffs' Member Participants.

23 28. After LDA took over administration of PORAC LDF, Fishman met with
24 the lawyers of LDME and asked the LDME lawyers to do less work on cases for the
25 Member Participants whose Member Associations were "maxed out" on their PORAC
26 LDF rate. Fishman and LDA asked the LDME lawyers to instead move their work to
27 the Member Associations who were not maxed out. Plaintiffs are informed, believe
28 and allege that what LDA and Fishman were asking the LDME lawyers to do was

1 unethetical and a breach of Fishman and LDA's fiduciary duties, since the LDME
2 lawyers have a duty to provide equal representation to all Member Participants for
3 whom they have been hired to represent.

4 29. LDA made further requests of the LDME lawyers that were unethical and
5 in breach of fiduciary duties, such as insisting that the LDME lawyers impose fee caps
6 on pending cases they were handling, without disclosing those caps to their clients and
7 Member Participants. LDA also insisted that LDME lawyers persuade a Member
8 Association with 3,000 members to apply for a benefit plan that would not have been
9 in that client's best interests, but would have been in the best interest of LDA. The
10 LDME lawyers refused to comply with these unethical requests by LDA.

11 30. LDA and The Trustees acted in concert in making these unethical
12 demands of the LDME lawyers. When the LDME lawyers would not comply, LDA
13 and The Trustees threatened the LDME attorneys with adverse consequences, and
14 ultimately removed LDME from the PORAC LDF panel of attorneys, and filed suit
15 against LDME.

16 31. In August 2013, PORAC LDF disseminated misleading information
17 about the LDME lawyers, prompting Plaintiffs to request specific information
18 concerning the allegations about the LDME lawyers. Plaintiffs specifically requested
19 the Minutes of The Trustees' meetings, correspondence and other documents that
20 fiduciaries have an obligation to provide to Plaintiffs.

21 32. Plaintiffs also requested documentation concerning PORAC LDF's
22 administrative costs, in order to compare those with the cost of legal services, to
23 determine if the reduction in benefits and the termination of the LDME lawyers was in
24 the best interest of the plan members. The Trustees also had a fiduciary obligation to
25 provide this information and documents to Plaintiffs.

26 33. Defendants, and each of them, have refused to comply with Plaintiffs'
27 requests for information and documentation, in breach of their fiduciary duties.
28

1 34. After terminating LDME from the PORAC LDF panel, Defendants
2 notified Plaintiffs' members that their open legal matters were being assigned to new
3 law firms. Plaintiffs' members were refused the opportunity to continue with their
4 prior counsel's representation and were told that they had no choice. Plaintiffs'
5 members were never advised that the open cases would be transferred, nor were they
6 permitted any input as to the selection of new lawyers.

7 35. Due to the refusal to provide the requested information and
8 documentation, and following the removal of the LDME firm from the PORAC LDF
9 panel and reassignment of Plaintiffs' members' cases to new counsel, RPOA and
10 TPOA elected to discontinue their membership in PORAC LDF.

11 36. Forbes, on behalf of PORAC LDF and LDA, advised Plaintiffs that, upon
12 termination by a Member Association, all benefits owed under the plan would cease,
13 including the closing of any currently open legal matters. PORAC LDF then sent
14 letters to RPOA and TPOA members who had open cases, advising them that all
15 benefits on previously accepted open cases were being terminated, despite the fact that
16 all open cases had been initiated and approved by PORAC LDF during the coverage
17 period for which Plaintiffs had already paid their contribution. Benefits were also
18 terminated for cases that originated after PORAC LDF's termination of coverage, but
19 within the time period for which Plaintiffs had paid their contribution, as provided
20 under Article II, Paragraph 3(b).

21 37. RPOA and TPOA filed appeals pursuant to the plan procedures on behalf
22 of their Members Participants who had open cases for which benefits were terminated.
23 Defendants denied the consolidated appeals of the RPOA members on February 20,
24 2015, and the consolidated appeals of TPOA members on March 19, 2015.

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28 **V. COUNT I - BREACH OF FIDUCIARY DUTIES**

(Against All Defendants)

38. Plaintiffs hereby incorporate each and every preceding paragraph as though fully set forth herein.

39. PORAC LDF is described as an ERISA plan. The laws of ERISA articulate a number of specific fiduciary duties, including the “prudent person” standard for managing plan assets, the duty of loyalty and care to plan beneficiaries, and the duty to follow the terms of the plan documents and instruments.

40. Defendants, and each of them, had a duty to not misrepresent material facts and to disclose those material facts known to them. In addition to these specific duties, the common law of trusts defines the fiduciaries’ authority and responsibility.

41. Defendants, and each of them, owed fiduciary duties to Plaintiffs and breached such duties by, among other things:

- A. Failing to disclose the inherent conflict of interest in LDA, Fishman, Forbes and Mann receiving compensation based upon PORAC LDF membership totals;
- B. Misrepresenting to Plaintiffs that they would provide information and documents material to the administration of the plan and the payment of benefits;
- C. Attempting to coerce the LDME lawyers to engage in unethical conduct to the detriment of Plaintiffs;
- D. Amending the plan document to include a limitation of action provision, as well as other amendments, designed to avoid paying benefits owed to Plaintiffs and other plan members;
- E. Misrepresenting PORAC LDF’s financial stability, whereas PORAC LDF is undercapitalized and cannot meet its obligations owed to plan participants without the reliance upon future contributions;

1 F. Making imprudent decisions concerning the administration of
2 claims, resulting in increased expenses that were passed on to
3 Plaintiffs and other plan members in the form of higher premiums.

4 42. Plaintiffs are informed, believe and allege that Defendants, and each of
5 them, engaged in additional wrongful conduct, including, but not limited to, receiving
6 electronic equipment paid for by PORAC LDF and using such equipment for personal
7 use, obtaining travel benefits for personal use, and otherwise using plan assets to
8 benefit themselves. As a result of Defendants' breach of fiduciary duties, Plaintiffs seek to
9 enjoin the alleged ERISA violations and to prevent any further financial gain to
10 Defendants until a complete accounting of PORAC LDF funds have been provided
11 and until all document requested have been produced to Plaintiffs.

12 43. Plaintiffs further seek other appropriate, equitable relief, including
13 enforcement of the plan to restore Plaintiffs' benefits that have been wrongfully
14 denied, reformation of the plan to preclude the termination of benefits for ongoing
15 claims, and surcharge for losses resulting from the breaches of fiduciary duties and to
16 prevent Defendants' unjust enrichment.

17 44. As a direct and proximate result of Defendants' breach of fiduciary
18 duties, Plaintiffs also seek recovery of losses resulting from each such breach, and
19 restoration to the plan any profits made through the use of plan assets.

20 45. Plaintiffs further seek recovery of attorney fees and costs, interest on
21 delayed benefit payments, and civil penalties, as well as any and all other relief the
22 Court may deem just and proper.

23
24 **VII. COUNT II - WRONGFUL DENIAL OF PLAN BENEFITS**
25 **(Against All Defendants)**

26 46. Plaintiffs hereby incorporate each and every preceding paragraph as
27 though fully set forth herein.
28

1 47. Plaintiffs and their members are entitled to benefits under the PORAC
2 LDF plan for all legal expenses incurred in connection with legal proceedings covered
3 by The Plan.

4 48. As alleged herein, Defendants, and each of them, wrongfully denied
5 Plaintiffs the benefits owed under The Plan.

6 49. Plaintiffs have fully performed each and every obligation required of
7 them under The Plan, have fully followed and complied with all Plan obligations and
8 PORAC LDF By-Laws, have exhausted all administrative remedies provided by The
9 Plan, and have no other plain and speedy remedy other than seeking relief pursuant to
10 this action.

11 50. Plaintiffs have been denied coverage for legal matters that were open and
12 pending under The Plan, for which benefits are owed, and have been denied the
13 opportunity to receive those Plan benefits for legal matters that have arisen after
14 PORAC LDF terminated coverage for Plaintiffs and their members, as alleged herein.

15 51. Defendants, and each of them, had a duty to provide an explanation for
16 the denial of benefits claimed by Plaintiffs under The Plan. Defendants, and each of
17 them, breached this duty by failing and refusing to provide a rationale for the denial of
18 benefits and failing and refusing to communicate with Plaintiffs regarding the denial
19 of benefits, the appeal of such denials, and any limitation of action provision
20 purportedly provided by The Plan.

21 52. Defendants, and each of them, further breached their duties by failing and
22 refusing to fully and fairly review the denial of benefits to Plaintiffs, in breach of their
23 fiduciary duties.

24 53. Defendants further breached their duties by amending and modifying the
25 PORAC LDF Plan document for their own personal gain, and to deprive Plaintiffs of
26 their right to seek a legal determination as to the wrongful denial of Plan benefits.

27 54. As a legal and proximate result of Defendants' wrongful denial of
28 benefits, Plaintiffs were forced to seek alternative legal counsel to provide

1 representation for Plaintiffs' members, incurring significant attorney fees and costs,
2 well in excess of \$250,000, that should have been covered under The Plan benefits.

3 55. As a further legal and proximate result of Defendants' wrongful denial
4 of benefits, Plaintiffs seek damages including the attorney fees and costs incurred that
5 should have been covered under The Plan, as well as any and all further remedies
6 deemed just and proper, including, but not limited to, restitution in position of a
7 constructive trust, injunction and specific performance.

8 56. Plaintiffs further seek recovery of attorney fees and costs, interest on
9 delayed benefit payments, and civil penalties, as well as any and all other relief the
10 Court may deem just and proper.

11
12 **VIII. PRAYER**

13 Wherefore, Plaintiffs pray:

- 14 1. For general, special, compensatory and statutory damages and civil
15 penalties available under the above causes of action;
16 2. For injunctive relief as described above;
17 3. For declaratory relief as described above;
18 4. For costs of suit;
19 5. For attorney fees; and
20 6. For any and all other appropriate relief the Court deems proper and just.
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IX. DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial.

DATED: August 20, 2015

CALLAHAN & BLAINE, APLC

By: /s/ Richard T. Collins
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